

Testimony Regarding Certificate of Need

By Patrick R. Devereux

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Good afternoon Representatives, Mr. Chairman. Thank you for the opportunity to testify before this committee to discuss the important issue of Certificate of Need.

My name is Patrick Devereux. I have been a life long resident of Missouri and currently live in University City. I am President of Group 21, Inc., a healthcare consulting firm located in Clayton. I have spent virtually my entire career in health care, having served as a healthcare consultant since 1978. Prior to that, I worked at St. Louis University Medical Center.

I have represented hospitals that support continuation of CON and physicians and medical groups who would like to see CON repealed so I do not have a “dog in this fight”. While I am not here to represent any group with a vested interest in this matter, I come before you hoping to present my observations on CON and how it relates to patients and our society in general. Based upon my experience I believe that Missouri’s CON legislation should be repealed.

My understanding is that Certificate of Need legislation came about in the early to mid 70s when hospitals were reimbursed on a cost plus basis. Under this reimbursement model, hospitals were reimbursed for whatever costs they incurred, including their capital costs. If hospitals incurred significant capital costs in underutilized projects, facilities, etc., Medicare would have been obligated to fund these unwise capital expenditures. The federal government recognizing this potential problem and its need, perhaps even obligation, to insure its funds are being spent responsibly caused the implementation of CON regulations. At the time, this made sense. But now, some 30 years later, when hospitals are no longer reimbursed based on their costs and with managed care

organizations becoming so influential in reimbursement policy, CON has outlived its usefulness. Market forces have taken control and now provider investment decisions are made based on what the provider deems to be in its best interest. I just believe that market forces will be more efficient in driving investment decisions than government planners who now drive those decisions in CON states.

Another early justification for CON was to reduce duplication of medical services and while this too may have made sense under the previous reimbursement model, reducing duplication of services also reduces competition and patient access to care. We as a society have been trying for decades to rein in our country's spiraling health care costs, with little success. More competition between providers will foster lower prices because providers will attempt to attract patients by cutting prices as they do now to managed care payers. Additionally, competition will foster greater innovation because providers, be they hospitals or physicians, will seek to attract patients by offering higher quality or newer innovative services so as not to have to compete on the basis of price alone. Proponents of CON suggest that CON reduces health care costs. While there is data to both support and refute this suggestion, I believe the higher costs resulting from diminished competition due to CON restrictions offset the cost reductions which may arise from other aspects of CON. The healthcare community seems to be highly skeptical of the notion of competition but I respectfully disagree with this skepticism. Competition will work in healthcare just as it works in any other industry. One need only look at cosmetic surgery or lasik surgery, where insurance is generally not applicable; to see how economic principles might be applied to health care if allowed to do so.

Now let me address the Specialty Hospital issue which I know is generating much of the controversy concerning this issue. It is now possible to perform more and more procedures on an outpatient basis. Reduced reimbursement levels at practically every level, have caused providers, hospitals and physicians alike, to seek more cost effective, efficient ways to provide services and they all seek additional services to offer. This is creating the inherent conflict we see today between hospitals, trying to remain exclusive providers of the services that traditionally have been their domain and physicians who are

seeking to provide these same services to enhance their incomes. And where physicians generally relied on hospitals for capital in the past, there now is significant investment capital seeking healthcare opportunities. While I understand why hospitals and physicians have an interest in how this evolves, why do the rest of us care? Should the rest of us simply not want a system that provided us with the best access to services at the lowest cost regardless where or by whom those services are provided? Last week I took my car to a transmission shop to have my transmission rebuilt. This shop specialized in transmission work and did no other repairs. The technicians were specially trained for transmission work and the shop had all the latest tools. I believe my transmission was repaired better and at a lower cost than if I had taken the car to a general car repair shop if I could have even found such a shop. Why will healthcare behave any differently than this transmission shop?

I know some supporters of Certificate of Need believe CON is a useful tool in preventing Specialty Hospitals and other non traditional providers of services from skimming the cream off the top, performing only the most profitable procedures. I believe this concern is overblown, but undoubtedly there may be at least some truth to this concern. But this should be no reason to prohibit these non traditional providers and Specialty Hospitals or create artificial barriers as CON does. If we believe these non traditional providers provide higher quality services at a lower cost, then these non traditional providers should be encouraged. And if they don't provide higher quality and lower costs, then consumers will gravitate to those providers who do. As an aside, the development of thorough, reliable data with respect to health care quality and costs are needed to facilitate consumer decision making. This data is not here yet, but it is coming.

Another criticism is the abuse that may arise from physicians referring to a facility in which the physician has an ownership interest. While I do not deny the potential for this abuse, I feel this too is overblown. If and when abuses occur there are already significant laws such as the Stark Legislation and the Anti Kickback Statute, in place to deal with this abuse. We do not need to prohibit these non traditional providers to prevent potential

abuse but simply enforce laws already on the books when necessary. I acknowledge this is uncharted territory, but it should be tried and we should not allow CON regulations or any other regulations to impede progress.

In conclusion, I believe consumers have historically been relatively uninformed regarding healthcare matters. But this is changing and consumers are becoming better informed every day. I believe well informed consumers can drive a health care system that relies on market forces to determine quality, access to services, and costs far better than any government regulations. For the reasons set forth in these remarks, I respectfully urge you to repeal the Certificate of Need legislation in the state of Missouri. Thank you for this opportunity. I will now be happy to address any questions.